

² Respondent's Brief at 5 (filed Jun. 16, 2005).

Therefore, respondent requests that the Board reverse the ALJ's Order and deny claimant benefits for her left knee complaints.

Claimant at this time has not filed a brief but presumably would ask the Board to affirm the ALJ's preliminary hearing Order.

At issue is whether claimant has sustained her burden of proving an accidental injury to her left knee arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant worked for respondent as a food and beverage supervisor for three and a half years. Claimant was injured on April 2, 2005, when she pushed a food cart into a cooler, her leg slipped and her right knee popped outward. Claimant informed her supervisor, Michele Mitchell, of this injury but because Ms. Mitchell could not come in to relieve her, claimant continued to work the rest of her shift.

The next day, claimant informed the store manager, Charles Davis, of her injury and after some discussion went to the emergency room as her right foot and knee were going numb. According to claimant, the pain she experienced in her right knee caused her to have to rely on her left knee more as she walked, stood and navigated with the crutches provided to her by the hospital. Claimant admits she has had ongoing complaints of pain, popping and grinding in the left knee, dating back to her childhood. She further concedes that before 2005, she had been told that surgically, there is nothing that can be done to help her left knee problems. However, she maintains that following this injury to her right knee (which she routinely referred to as her "good" knee) and her subsequent need to rely on her left knee to stoop and walk, she has suffered an increase in pain and symptoms in her left knee. Claimant testified that her left knee problems are now constant and worse than before her April 2, 2005 accident.

Claimant indicated that she mentioned these problems with her left knee to Mr. Davis the day after her accident. But he testified that he did not recall claimant ever mentioning any problems with her left knee during this conversation. He did indicate that he knew of claimant's previous problems with her right knee and that she referred to her right knee as the "good" one.

The ALJ was persuaded by claimant's testimony that she aggravated her left knee due to the right knee injury. The Board finds this determination should not be disturbed.

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the

affliction.³ The test is not whether the job-related activity or injury caused the condition, but whether the job-related activity or injury aggravated or accelerated the condition.⁴ While it would be helpful for a physician to speak to the issue of whether claimant's preexisting condition had, in some way, been altered, the claimant's testimony alone is sufficient evidence of his physical condition.⁵

It is clear from the record that claimant's physical condition has, when compared to her pre-injury accident, changed. Her pain is constant and she attributes this to her increased reliance on the left knee due to the pain in the right. It is unfortunate that her left knee complaints are not reflected in the medical records but under these facts, it was not persuasive to the ALJ. The Board finds no justifiable reason to disturb the ALJ's preliminary hearing order.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Thomas Klein dated May 27, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2005.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

⁴ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁵ *Hanson*, 28 Kan. App. 2d 92.